

Exhibit A

Hearing Demonstratives

Entropic Communications, LLC v. Dish Network Corp. et al.

Case No. 2:23-cv-1043-JWH-KES

April 11, 2024

Non-Confidential Version

Standing Issues

Contract Claims

Case 2:23-cv-01043-JWH-KES Document 442-1 Filed 04/10/24 Page 4 of 27
Page ID #:19254

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ENTROPIC COMMUNICATIONS, Case No. 2:23-cv-1043-JWH-KES
LLC, Plaintiff,

vs. DEFENDANTS DISH NETWORK
CORPORATION, DISH NETWORK
L.L.C., AND DISH NETWORK
SERVICE L.L.C.'S ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS TO
PLAINTIFF'S COMPLAINT

DISH NETWORK CORPORATION,
DISH NETWORK L.L.C., DISH
NETWORK SERVICE L.L.C., AND
DISH NETWORK CALIFORNIA
SERVICE CORPORATION, Defendants.

DEFENDANT DISH NETWORK
CALIFORNIA SERVICE CORP.'S
FIRST AMENDED ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS TO
PLAINTIFF'S COMPLAINT

JURY TRIAL DEMANDED

Disputed Judge: Hon. John W. Holcomb
Magistrate Judge: Hon. Karen E. Scott

DISH'S ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES, AND
COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint D.I. 316

24 98. Entropic has breached section 5.1.1 of the MoCA IPR Policy. Section
25 5.1.1 provides that Entropic must “offer to license” its “Essential Patent Claims to the
26 extent necessary to use, make, have made, offer for sale, sell, and import” products
27 complaint with MoCA standards on a “non-exclusive, non-sub-licensable, world
28 wide” basis “on fair, reasonable and nondiscriminatory terms and conditions
1 (collectively, ‘**RAND**’) . . .” Entropic has breached section 5.1.1 at least because it
2 has failed to provide DISH with a RAND-compliant license offer.

3 99. Entropic has also breached section 7.2 of the MoCA IPR Policy. Section
4 7.2 provides that “terminated Alliance Part[ies] shall be entitled to request or require
5 any Alliance Party to license such Alliance Party’s Essential Patent Claims under
6 Section 5.1 (RAND Licenses), but only to the extent necessary to use, make, have
7 made, offer for sale, sell and import” products complaint with MoCA standards
8 “approved by the Board of Directors prior to such expiration or termination.” To the
9 extent DISH products implement any part of any MoCA Standard, Entropic has
10 breached section 7.2 at least because it has failed to provide DISH with a RAND-
11 compliant license offer.

Contract Claims

Case 2:23-cv-01043-JWH-KES Document 442-1 Filed 04/10/24 Page 5 of 27
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DISH NETWORK CORPORATION, DISH NETWORK L.L.C., DISH NETWORK SERVICE L.L.C. AND DISH NETWORK CALIFORNIA SERVICE CORPORATION, Defendants, DEFENDANT DISH NETWORK CALIFORNIA SERVICE CORP.'S FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT

JURY TRIAL DEMANDED

Disposit Judge: Hon. John W. Holcomb
Magistrate Judge: Hon. Karen E. Scott

DISH'S ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES, AND COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint D.I. 316

14 108. MaxLinear has breached Section 5.1.2 of the MoCA IPR Policy. Section
15 5.1.2 provides that “[a]ny sale, assignment or transfer by an Alliance Party . . . to an
16 unaffiliated third party of an Essential Patent Claim shall be subject to the terms in
17 this IPR Policy” and “any agreement for transferring or assigning Essential Patent
18 Claims include a provision that such transfer or assignment is subject to existing
19 licenses and obligations to license imposed on the Alliance Party by this Agreement
20 and the Alliance Bylaws.” MaxLinear breached Section 5.1.2 at least because it failed
21 to transfer the Asserted Patents “subject to the terms” of the IPR Policy, nor did
22 MaxLinear include any provision in the agreement transferring the Asserted Patents
23 to Entropic that the transfer was subject to the obligations imposed by the MoCA IPR
24 Policy.

25 109. MaxLinear has also breached Section 4.1.2 of the MoCA IPR Policy. In
26 Section 4.1.2, MaxLinear “represent[ed], warrant[ed], and agree[d] that it has not and
27 will not intentionally transfer or otherwise encumber its patents that reasonably may
28 contain Essential Patent Claims for the purpose of circumventing the obligation to
1 grant licenses contained in this IPR Policy.” MaxLinear breached Section 4.1.2 by
2 transferring the Asserted Patents without requiring Entropic to agree to license the
3 Asserted Patents on RAND terms and (as described more fully below) by attempting
4 to intentionally circumvent the RAND promise.

DISH Amended Counterclaims

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3 69. In line with this stated goal, MoCA routinely promoted the use of MoCA
4 technology by non-members. For example, MoCA published brochures urging in-
5 home television service providers and installers, such as the DISH Defendants, to
6 adopt MoCA technology. *See, e.g.,* Ex. 10. Such promotion did not indicate that a
7 company need be a member of MoCA in order to avoid exorbitant non-RAND patent
8 licensing demands. *See id.*

DISH Counterclaim Complaint

D.I. 316 at 84-85

DISH Amended Counterclaims

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SERVICE CORPORATION, Defendants.

JURY TRIAL DEMANDED

District Judge: Hon. John W. Holcomb
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DISH'S ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES, AND
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Case No. 2:23-cv-1043-JWH-KES

22 41. Original Entropic acknowledged its obligation to comply with the MoCA
23 IPR Policy. In its 2012 Annual Report filed with the U.S. Securities and Exchange
24 Commission, it stated that, “[i]n connection with our membership in MoCA, we are
25 required to license any of our patent claims that are essential to implement the MoCA
26 specification to other MoCA members under reasonable and non-discriminatory
27 terms.”

DISH Counterclaim Complaint

D.I. 316 at 78

Extrinsic Evidence Must Be Considered



Case No. 23-cv-02065-AJR-BLS
Signed November 17, 2022

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**ORDER GRANTING IN PART AND DENYING IN
PART DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT**

Jonathan J. Berzaglio, United States District Judge

*1. Presently pending before the Court is Defendant
Teva Pharmaceuticals International GmbH's ("Defendant")
motion to dismiss Plaintiff's First Amended Complaint
(Doc. No. 21). The motion is fully briefed. (Doc. Nos. 27 &
28), and the parties are invited to submit comments on the paper.
For the reasons stated herein, the Court GRANTS IN PART
AND DENIES IN PART the motion to dismiss.

BACKGROUND
Plaintiff Teva Pharmaceuticals International GmbH ("Plaintiff") is a
California nonprofit public benefit research institute.
After a period of time, Plaintiff ("Plaintiff") is a
California nonprofit public benefit research institute.
After a period of time, Plaintiff ("Plaintiff") is a
California nonprofit public benefit research institute.

In 2006, Plaintiff issued an exclusive license to TACC
Corporation ("TACC License") for all of Plaintiff's patent
rights and its confidential and proprietary information
concerning the manufacture, use and development of
drugs for the treatment of multiple sclerosis – or that
TACC Corporation could further develop and commercialize
the pending drug. (Pl. ¶ 1.) TACC Corporation has
issued a sublicense to Sonnet International Ltd. ("Sonnet")
through Sonnet's subsidiary, Avea Trading S.A., in 2012.
("Sonnet Sublicense") (Pl. ¶ 10.) In 2018, Plaintiff & Ca-
lin ("Mark") assigned Sonnet, and Teva Pharmaceuticals
International Ltd. ("Teva") patent rights, to TACC
Corporation. (Pl. ¶ 11.) Defendant ultimately succeeded
TACC Corporation's TACC License obligations due to
Plaintiff's breach of the obligations of the Sonnet Sublicense.
(Pl. ¶ 12, 13.)

The TACC License contains two provisions, which are
particularly significant here because they describe the
exclusive obligations to be performed by TACC Corporation
to Plaintiff in exchange for the TACC License. As relevant to
the instant case, the TACC License obligates Defendant
to obligate under Section 3.2 to make two submissions
presented: once upon approval of a candidate or equivalent in
the United States, and upon approval of a candidate or
equivalent in the European Union. (Pl. ¶ 12.) Section 3.3
obligates Defendant to make timely payments (as a going
concern) based on net sales of licensed products as defined
in Section 3.3.2 within a specific period after the end of
each calendar quarter (Sections 3.3.1 and 3.3.2) and submit
reports of net sales to Plaintiff upon audited quarterly payments
(Section 3.3), all subject to the duration provided under
Section 3.1. (Pl. ¶ 12, 13.)

After further research and development, Plaintiff applied the
regulatory approval of a candidate under the same framework
for treatment of multiple sclerosis. (Pl. ¶ 12-13.) Approval
was granted by the European Medical Authority on August
22, 2017, and by the Food & Drug Administration on March
28, 2019. (Pl. ¶ 14.) Defendant made the required submission
process after each respective approval, complying with
Defendant's obligations under Section 3.2 of the TACC
License. (Pl. ¶ 14.) However, Plaintiff alleges Defendant has failed
to adequately fulfill its various royalty obligations, resulting
from the sale of its product, as described above. (Pl. ¶ 14.)
Plaintiff and Defendant entered the ongoing interpretation of
TACC License Section 3.3, which reads:

*2. Duration of Royalty Obligations. The royalty
obligations of TACC to us shall EXTEND INDEFINITELY.

“Plaintiff’s breach of contract claim survives because the extrinsic evidence alleged by the Plaintiff, whether admissible or not, must be considered on the merits by the Court. Where a contract is ambiguous and extrinsic evidence is introduced, the Ninth Circuit has found ‘[t]he case must proceed beyond the pleadings’ so that the court may consider the evidence.” *A. Kemp Fisheries, Inc.*, 852 F.2d at 496 n.2. As such, Defendant’s motion to dismiss Plaintiff’s breach of contract claim is DENIED.”

Scripps Rsch. Inst. v. Teva
Pharms. Int'l GmbH,
2022 WL 20033436, at *4
(S.D. Cal. Nov. 17, 2022)

Entropic Complaint

Case 2:23-cv-01043 Document 1 Filed 02/10/23 Page 1 of 65 Page ID #:1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTROPIC COMMUNICATIONS, LLC. Case No. 2:23-cv-01043
Plaintiff, ORIGINAL COMPLAINT FOR
v. PATENT INFRINGEMENT
DISH NETWORK CORPORATION;
DISH NETWORK LLC, DISH
NETWORK SERVICE, LLC, AND
DISH NETWORK CALIFORNIA
SERVICE CORPORATION,
Defendants.

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

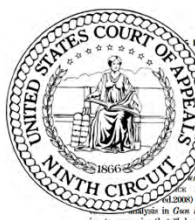
11 84. The Accused MoCA Instrumentalities are compliant with the provisions
12 of MoCA 1.0, 1.1., and/or 2.0, as described in the '518 Patent claim chart, Exhibit B.

5 93. The claims of the '518 Patent are essential to practicing at least MoCA
6 standards versions 1.0, 1.1, and/or 2.0.

Entropic Complaint
D.I. 1

D.I. 1 at 16 & 17

Attorneys' Fees as Damages: RAND



FEDERAL REPORTER, 3d SERIES

insufficient to low causes proof. 38 supply and used for a use in the as increase

RONALD R. 37 (4th LAW, WISCONSIN, H. COOPER, & PROCEEDURE 2000) (criticizing the analysis in *Gen Rights* for failing to recognize that "[r]estriction of lawful supply inevitably increases the price absent a change in the demand schedule").

In accordance with basic economics, plaintiffs should be able to show that a challenged statute has caused an increase in price by showing that it has decreased supply. But *Gen Rights* prevents plaintiffs from establishing causation in this manner unless they can show that the statute actually "directs manufacturers or dealers to raise the price of regulated" goods. 98 F.3d at 1110. This contravenes the rule that causation may be indirect: "causation may be found even if there are multiple links in the chain connecting the defendant's unlawful conduct to the plaintiff's injury." *Meredith v. Garcia*, 708 F.3d 1099, 1012 (9th Cir.2016). As long as plaintiffs can show, "without relying on speculation or guesswork," that challenged governmental conduct is "at least a substantial factor" behind an injury, they can establish causation. *Id.* at 1013. The law of supply and demand requires no speculation or guesswork, so there should be little doubt that a statute reducing supply is at least a substantial factor behind a rise in price.

Were it not for *Gen Rights*, I would conclude that Plaintiffs have standing to challenge the Jones Act. At a minimum, Plaintiffs allege that the Jones Act limits

the supply of vessels available to serve the Hawaii shipping market. This alone should be sufficient to establish that the Jones Act causes prices in that market to be higher than they otherwise would be. But, regrettably, *Gen Rights* requires more.

That said, this case is a poor vehicle for revisiting *Gen Rights* because, as Judge Clifton's opinion explains, Plaintiffs have failed to state a claim whether or not they have established standing. I expect the day will come, however, when it will be necessary to reconsider how plaintiffs injured by high prices can show that a defendant's challenged conduct caused those prices to increase. When it does, we should overrule *Gen Rights* and bring the law of our circuit into conformity with fundamental principles of economics.



MICROSOFT CORPORATION,
a Washington corporation,
Plaintiff-Appellee,

v.
MOTOROLA, INC.; Motorola Mobility,
Inc.; General Instrument Corporation,
Defendants-Appellants.

No. 14-35293.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted April 8, 2015.

Filed July 30, 2015.

Background: Software developer brought breach of contract action, alleging that patents improperly refused to offer it licenses for use of foreign and domestic stan-

"The attorneys' fees and costs incurred in defending the injunctive actions were, in essence, such mitigation, and so are **recoverable expenses of reasonable mitigating actions.**"

"The RAND context is analogous to these various circumstances in which attorneys' fees expended in earlier litigation are collectible as damages for a proven legal injury. As the district court reasoned, treating fees in separate lawsuits as damages where the RAND commitment is breached 'makes particular sense in light of the purpose of the RAND commitment, which is to encourage widespread adoption of the standard.' That purpose would be substantially defeated if adopting the standard "would expose [potential implementors] to bad faith injunctive relief claims and they were **forced to absorb the cost of defending themselves.**"

(Citations omitted; emphasis added.)

Microsoft v. Motorola,
795 F.3d 1024, 1050–51
(9th Cir. 2015)

Contract Claims: Nominal Damages



“The court concludes that *Aguilera* and *Ruiz*, which are not binding on this court on questions of California law, **do not defeat a plaintiff’s ability to recover nominal damages for breach of contract** even in the absence of actual damages. Plaintiffs, therefore, have alleged ‘a legal wrong that is fully distinct from the actual damages.’ *Sweet*, 169 Cal.App.2d at 632, 337 P.2d 499.”

In re Facebook Priv. Litig.,
192 F. Supp. 3d 1053, 1061-62
(N.D. Cal. 2016)

DISH Amended Counterclaims

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15 62. DISH Technologies sells the DISH “Hopper” and “Joey” – products
16 implicated in Entropic’s Complaint. According to the explicit terms of the MoCA
17 IPR policy, DISH Technologies thus shall be “entitled” to require Entropic and/or
18 MaxLinear to license patents essential to MoCA Standards on RAND terms. DISH
19 Technologies therefore has standing to bring claims to enforce the terms of the IPR
20 Policy.

DISH Counterclaim Complaint

D.I. 316 at 82

DISH Amended Counterclaims

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21 63. Moreover, DISH Technologies has been harmed by Entropic's and
22 MaxLinear's wrongful behavior. Entropic's failure to license on RAND terms,
23 MaxLinear's failure to include RAND encumbrances in its assignment to Entropic,
24 and the other wrongful acts undertaken by Entropic and MaxLinear, has harmed DISH
25 Technologies' ability to sell its product, including by raising its costs through this
26 lawsuit. Moreover, DISH Technologies has also suffered diminution of reputation in
27 the marketplace, including its reputation as an innovator. These harms underline
28 DISH Technologies' standing to enforce the terms of the MoCA IPR policy.

DISH Counterclaim Complaint
D.I. 316

D.I. 316 at 82

Challenges to the Sufficiency of DISH's Pleadings

Three Broad Categories of Claims

- Contract-Related Claims (Counts I-IV)
- Fraud-Related Claims (Counts V-VII)
- Antitrust-Related Claims (Counts VIII-XI)

Contract Claims

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ENTROPIC COMMUNICATIONS, LLC, Case No. 2:23-cv-1043-JWH-KES
Plaintiff, DEFENDANTS DISH NETWORK CORPORATION, DISH NETWORK L.L.C. AND DISH NETWORK SERVICE L.L.C.'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
v. DISH NETWORK CORPORATION, DISH NETWORK L.L.C., DISH NETWORK SERVICE L.L.C. AND DISH NETWORK CALIFORNIA SERVICE CORPORATION, DEFENDANT DISH NETWORK CALIFORNIA SERVICE CORP.'S FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
Defendants. JURY TRIAL DEMANDED

District Judge: Hon. John W. Holcomb
Magistrate Judge: Hon. Karen E. Scott

DISH'S ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES, AND COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

21 97. To the extent the MoCA IPR Policy imposes any obligations on DISH,
22 DISH has discharged them. By way of example, DISH made a request, in writing,
23 for a RAND-complaint license offer.

DISH Counterclaim Complaint
D.I. 316

Contract Claims

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ENTROPIC COMMUNICATIONS, Case No. 2:23-cv-1043-JWH-KES
LLC, Plaintiff,
v. DEFENDANTS DISH NETWORK
CORPORATION, DISH NETWORK
SERVICE L.L.C. AND DISH NETWORK
SERVICE L.L.C.'S ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS TO
PLAINTIFF'S COMPLAINT
DISH NETWORK CORPORATION,
DISH NETWORK L.L.C., DISH
NETWORK SERVICE L.L.C., AND
DISH NETWORK CALIFORNIA
SERVICE CORPORATION, Defendants.

DEFENDANT DISH NETWORK
CALIFORNIA SERVICE CORP.'S
FIRST AMENDED ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS TO
PLAINTIFF'S COMPLAINT
JURY TRIAL DEMANDED

Disputed Judge: Hon. John W. Holcomb
Magistrate Judge: Hon. Karen E. Scott

DISH'S ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES, AND
COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint D.I. 316

24 98. Entropic has breached section 5.1.1 of the MoCA IPR Policy. Section
25 5.1.1 provides that Entropic must “offer to license” its “Essential Patent Claims to the
26 extent necessary to use, make, have made, offer for sale, sell, and import” products
27 complaint with MoCA standards on a “non-exclusive, non-sub-licensable, world
28 wide” basis “on fair, reasonable and nondiscriminatory terms and conditions
1 (collectively, ‘**RAND**’) . . .” Entropic has breached section 5.1.1 at least because it
2 has failed to provide DISH with a RAND-compliant license offer.

3 99. Entropic has also breached section 7.2 of the MoCA IPR Policy. Section
4 7.2 provides that “terminated Alliance Part[ies] shall be entitled to request or require
5 any Alliance Party to license such Alliance Party’s Essential Patent Claims under
6 Section 5.1 (RAND Licenses), but only to the extent necessary to use, make, have
7 made, offer for sale, sell and import” products complaint with MoCA standards
8 “approved by the Board of Directors prior to such expiration or termination.” To the
9 extent DISH products implement any part of any MoCA Standard, Entropic has
10 breached section 7.2 at least because it has failed to provide DISH with a RAND-
11 compliant license offer.

Contract Claims

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18 Attorneys for Defendants and Counter-Claimants

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24 L.L.C., AND DISH NETWORK
25 SERVICE L.L.C.'S ANSWER,
26 AFFIRMATIVE DEFENSES AND
27 COUNTERCLAIMS TO
28 PLAINTIFF'S COMPLAINT

29 DISH NETWORK CORPORATION,
30 DISH NETWORK L.L.C., DISH
31 NETWORK SERVICE L.L.C., AND
32 DISH NETWORK CALIFORNIA
33 SERVICE CORPORATION, Defendants, DEFENDANT DISH NETWORK
34 CALIFORNIA SERVICE CORP.'S
35 FIRST AMENDED ANSWER,
36 AFFIRMATIVE DEFENSES AND
37 COUNTERCLAIMS TO
38 PLAINTIFF'S COMPLAINT

39 JURY TRIAL DEMANDED

40 District Judge: Hon. John W. Holcomb
41 Magistrate Judge: Hon. Karen E. Scott

42 DISH'S ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES, AND
43 COUNTERCLAIMS TO COMPLAINT
44 Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint D.I. 316

14 108. MaxLinear has breached Section 5.1.2 of the MoCA IPR Policy. Section
15 5.1.2 provides that “[a]ny sale, assignment or transfer by an Alliance Party . . . to an
16 unaffiliated third party of an Essential Patent Claim shall be subject to the terms in
17 this IPR Policy” and “any agreement for transferring or assigning Essential Patent
18 Claims include a provision that such transfer or assignment is subject to existing
19 licenses and obligations to license imposed on the Alliance Party by this Agreement
20 and the Alliance Bylaws.” MaxLinear breached Section 5.1.2 at least because it failed
21 to transfer the Asserted Patents “subject to the terms” of the IPR Policy, nor did
22 MaxLinear include any provision in the agreement transferring the Asserted Patents
23 to Entropic that the transfer was subject to the obligations imposed by the MoCA IPR
24 Policy.

25 109. MaxLinear has also breached Section 4.1.2 of the MoCA IPR Policy. In
26 Section 4.1.2, MaxLinear “represent[ed], warrant[ed], and agree[d] that it has not and
27 will not intentionally transfer or otherwise encumber its patents that reasonably may
28 contain Essential Patent Claims for the purpose of circumventing the obligation to
1 grant licenses contained in this IPR Policy.” MaxLinear breached Section 4.1.2 by
2 transferring the Asserted Patents without requiring Entropic to agree to license the
3 Asserted Patents on RAND terms and (as described more fully below) by attempting
4 to intentionally circumvent the RAND promise.

Contract Claims

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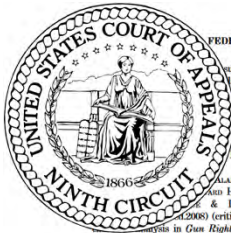
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DISH NETWORK L.L.C.; DISH
NETWORK SERVICE L.L.C.; AND
DISH NETWORK CALIFORNIA
SERVICE CORPORATION, Defendants.
District Judge: Hon. John W. Holcomb
Magistrate Judge: Hon. Karen E. Scott
DISH'S ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES, AND
COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint D.I. 316

5 110. DISH has been harmed by MaxLinear's breach of the MoCA IPR Policy.
6 By way of example, DISH is forced to expend considerable sums of money and other
7 resources to defend itself in the present suit—resources that would not have had to
8 expend had MaxLinear complied with the terms of the MoCA IPR Policy. DISH has
9 also suffered diminution of reputation in the marketplace. DISH is entitled to recover
10 these damages, as well as any additional relief that may be appropriate or required to
11 address MaxLinear's breach.

Contract Claims



FEDERAL REPORTER, 3d SERIES

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ALAN WAGNER,
AND H. COOPER,
& PROCDURE

ing to recognize that "[r]estriction of law-
ful supply inevitably increases the price
absent a change in the demand schedule").

In accordance with basic economics,
plaintiffs should be able to show that a
challenged statute has caused an increase
in price by showing that it has decreased
supply. But *Gun Rights* prevents plain-
tiffs from establishing causation in this
manner unless they can show that the
statute actually "directs manufacturers or
dealers to raise the price of regulated"
goods. 98 F.3d at 1130. This contravenes
the rule that causation may be indirect:
"causation may be found even if there are
multiple links in the chain connecting the
defendant's unlawful conduct to the plain-
tiff's injury." *Mendius v. Garcia*, 798 F.3d
1099, 1012 (9th Cir.2014). As long as
plaintiffs can show, "without relying on
speculation or guesswork," that challenged
governmental conduct is "at least a sub-
stantial factor" behind an injury, they can
establish causation. *Id.* at 1013. The law
of supply and demand requires no specula-
tion or guesswork, so there should be little
doubt that a statute reducing supply is at
least a substantial factor behind a rise in
price.

Were it not for *Gun Rights*, I would
conclude that Plaintiffs have standing to
challenge the Jones Act. At a minimum,
Plaintiffs allege that the Jones Act limits

the supply of vessels available to serve the
Hawaii shipping market. This alone
should be sufficient to establish that the
Jones Act causes prices in that market to
be higher than they otherwise would be.
But, regrettably, *Gun Rights* requires
more.

That said, this case is a poor vehicle for
revisiting *Gun Rights* because, as Judge
Clifton's opinion explains, Plaintiffs have
failed to state a claim whether or not they
have established standing. I expect the
day will come, however, when it will be
necessary to reconsider how plaintiffs in-
jured by high prices can show that a de-
fendant's challenged conduct caused those
prices to increase. When it does, we
should overrule *Gun Rights* and bring the
law of our circuit into conformity with
fundamental principles of economics.



MICROSOFT CORPORATION,
a Washington corporation,
Plaintiff-Appellee,

v.

MOTOROLA, INC.; Motorola Mobility,
Inc.; General Instrument Corporation,
Defendants-Appellants.

No. 14-35383.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted April 8, 2015.

Filed July 30, 2015.

Background: Software developer brought
breach of contract action, alleging that pat-
entee improperly refused to offer it licen-
ses for use of foreign and domestic stan-

"Motorola's arguments, however, elide a critical factor in determining the propriety of attorneys' fees in the damages award in this case. The fees at issue here were incurred not in the current breach of contract action but in defending against the injunctive action found to have breached the RAND agreement. **The fees sought are thus distinct from the same-suit fees generally banned by the American rule.** As losses independent of the current litigation and triggered by the contract-breaching conduct, they are best characterized as recoverable consequential contract damages—the kind of damages ordinarily recoverable in breach of contract suits."

"Moreover, courts routinely award attorneys' fees as damages in a number of analogous circumstances, when attorneys' fees are a fair measure of the harm impermissibly caused by the defendant."

Microsoft v. Motorola,
795 F.3d at 1049-1050.

FISH.
FISH & RICHARDSON

Anti-Trust Claims



UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
San Antonio, Texas
Case No. 08-47-0864
N.D. Tex.
Dec. 11, 2008

Background. Plaintiff, RIM Ltd., a Canadian corporation, alleges that Motorola, Inc. ("Motorola") violated antitrust laws by engaging in a conspiracy to restrain trade in the market for mobile telephones. Plaintiff alleges that Motorola and its subsidiaries, including Motorola Mobility, Inc. ("Motorola Mobility"), entered into an agreement to allocate markets and suppress competition in the mobile telephone market. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-poach" agreement, whereby they agreed not to hire or solicit each other's employees, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-bidding" agreement, whereby they agreed not to bid for each other's patents, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-licensing" agreement, whereby they agreed not to license their patents to each other, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-competition" agreement, whereby they agreed not to compete with each other, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-innovation" agreement, whereby they agreed not to innovate, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-standards" agreement, whereby they agreed not to develop or participate in industry standards, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-mergers" agreement, whereby they agreed not to merge or acquire each other, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-licensing" agreement, whereby they agreed not to license their patents to each other, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-competition" agreement, whereby they agreed not to compete with each other, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-innovation" agreement, whereby they agreed not to innovate, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-standards" agreement, whereby they agreed not to develop or participate in industry standards, thereby suppressing competition and harming consumers. Plaintiff alleges that Motorola and Motorola Mobility entered into a "no-mergers" agreement, whereby they agreed not to merge or acquire each other, thereby suppressing competition and harming consumers.

1. Antitrust and Trade Regulation Act.
To establish a prima facie case of a violation of the Sherman Act, a plaintiff must prove two elements: (1) possession of monopoly

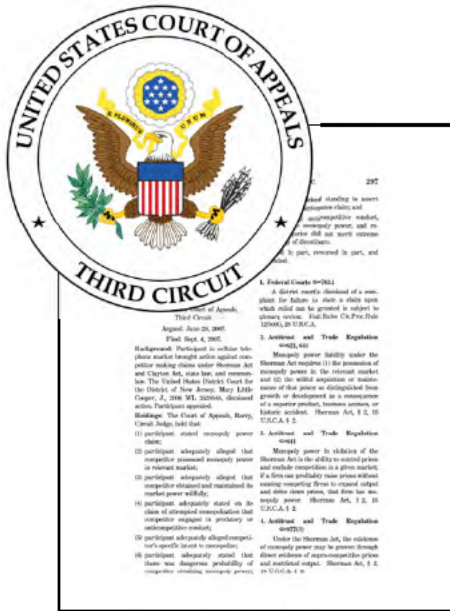
Recognizes that *Allied Tube* “implies that, without safeguards against bias, the very existence of standards is inherently anti-competitive.”

“Both the Third Circuit, in *Broadcom*, and the Supreme Court, in *Allied Tube*, have stated that standards, without the proper safeguards, are inherently anticompetitive. It follows that when an entity side-steps these safeguards in an effort to return the standard to its natural anti-competitive state, anti-competitive effects are inevitable.”

RIM Ltd. v. Motorola, Inc.,
644 F. Supp. 2d 788, 795
(N.D. Tex. 2008)

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Anti-Trust Claims



Broadcom Corp. v. Qualcomm Inc.,
501 F.3d 297, 314 (3d Cir. 2007)

“We hold that (1) in a consensus-oriented private standard-setting environment, (2) a patent holder's intentionally false promise to license essential proprietary technology on FRAND terms, (3) coupled with an SDO's reliance on that promise when including the technology in a standard, and (4) the patent holder's subsequent breach of that promise, is actionable anticompetitive conduct.”

Anti-Trust Claims



“The crux of the claim is Funai’s assertion that Defendants lied to the IEEE and ITU in order to induce those SSOs to incorporate Defendants’ technologies into the 802.11 standard for wireless Internet connectivity and the H.264 standard for video compression. . . . Those allegations, separate and apart from Funai’s allegations regarding the ITC Action and District Court Action, are sufficient to give rise to a Section 2 claim.”

Funai Elec. Co. v. LSI Corp.,
2017 WL 1133513, at *5
(N.D. Cal. Mar. 27, 2017)

Anti-Trust Claims

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144. As discussed above, MaxLinear executed a Patent Purchase Agreement with Entropic that transferred ownership of the Asserted Patents. As also discussed above (*see* paragraphs 124-131) MaxLinear and Entropic entered into this agreement in an attempt to “wash” the Asserted Patents of any obligation to license on RAND terms, despite each’s obligation to do so pursuant to the MoCA IPR Policy.

DISH Counterclaim Complaint
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Anti-Trust Claims

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ENTROPIC COMMUNICATIONS, LLC, Case No. 2:23-cv-1043-JWH-KES
Plaintiff, DEFENDANTS DISH NETWORK CORPORATION; DISH NETWORK L.L.C.; AND DISH NETWORK SERVICE L.L.C.'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
v. DISH NETWORK CORPORATION; DISH NETWORK L.L.C.; DISH NETWORK SERVICE L.L.C.; AND DISH NETWORK CALIFORNIA SERVICE CORPORATION, DEFENDANT DISH NETWORK CALIFORNIA SERVICE CORP.'S FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
Defendants. JURY TRIAL DEMANDED

District Judge: Hon. John W. Holcomb
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DISH'S ANSWER, AFFIRMATIVE AND ADDITIONAL DEFENSES, AND COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint D.I. 316

13 146. Competition in the relevant markets has been injured as a result of
14 Entropic's and MaxLinear's behavior. By way of example, MaxLinear's and
15 Entropic's behavior forces the providers of home television services to engage in
16 expensive litigation (rather than negotiate a RAND license)—costs that must
17 eventually be passed on to end-users. Moreover, if Entropic gets its demand for \$1
18 billion, those costs must also be additionally passed on to end-users of home television
19 services, further driving up the costs. These additional costs reduce or eliminate the
20 potential price benefit to consumer that MoCA based networking provides as
21 compared to competing technologies, such as recent generations of WiFi based
22 products. Meanwhile, MaxLinear is able to charge a higher rate for its own MoCA
23 compatible products due to the artificial inflation of market prices.